

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

OTIS CARLISLE, JR.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-11-2849
	§	
JP MORGAN CHASE BANK, N.A.,	§	
	§	
Defendant.	§	

ORDER

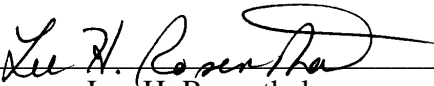
In this mortgage-foreclosure suit, this court previously concluded that three of the plaintiff's four claims were moot and that the fourth lacked legal merit. The court therefore granted the defendant's motion to dismiss and entered final judgment for the defendant. (Docket Entry Nos. 16–17). The plaintiff has filed a motion for new trial. (Docket Entry No. 18). The basis for the motion is that, when the court granted the motion to dismiss and entered final judgment for the defendant, “[t]he parties were working on a resolution of the claims at the time the Court dismissed the Plaintiff's claims and thus, Plaintiff never had the opportunity to present evidence in support of his claims.” (*Id.*, ¶ 6). The defendant opposes the motion. (Docket Entry No. 19).

The plaintiff's argument is unavailing. This court previously stayed the case until February 27, 2012 to allow the parties to pursue settlement discussions. In the event that settlement discussions were not fruitful, the court gave the plaintiff until February 29 to respond to the motion to dismiss. (Docket Entry No. 11). The parties were not able to reach a settlement. The parties did not ask the court to extend the stay so that they could continue pursuing a possible settlement. Instead, they finished briefing the motion to dismiss. (Docket Entry Nos. 13–14). The court

therefore properly ruled on the motion to dismiss. Moreover, that the “Plaintiff never had the opportunity to present evidence in support of his claims” is irrelevant given the case’s procedural posture. The defendant filed a motion to dismiss, not a motion for summary judgment. So the issue before the court was whether, taking all nonconclusory allegations as true, the plaintiff had stated a claim upon which relief could be granted—regardless of the evidence that the plaintiff could present in support of that claim.

The plaintiff’s motion for new trial, (Docket Entry No. 18), is denied.

SIGNED on April 23, 2012, at Houston, Texas.



Lee H. Rosenthal
United States District Judge